Proposed Rules

Federal Register

Vol. 60, No. 6

Tuesday, January 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL **MANAGEMENT**

5 CFR Part 300 RIN 3206-AG06

Time-In-Grade Rule Eliminated

AGENCY: Office of Personnel Management.

ACTION: Extension of public comment period on proposed elimination of timein-grade rule.

SUMMARY: On June 15, 1994, the Office of Personnel Management (OPM) proposed regulations to abolish the time-in-grade restriction on promotion of Federal employees to positions in the General Schedule. The National Performance Review and National Partnership Council had recommended the elimination of the 1-year Federal service requirement for promotions because it prevents employees from applying for jobs for which the qualify.

To ensure that the public has ample opportunity to fully review and comment on the proposed rulemaking, this notice extends the public comment period for an additional 60 days.

DATES: Comments must be submitted on or before March 13, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington,

FOR FURTHER INFORMATION CONTACT: Lee Shelkey Edwards on 202–606–0830, TDD 202-606-0023, or FAX 202-606-

SUPPLEMENTARY INFORMATION:

A. Background

Since the early 1950's, Federal employees in General Schedule positions at GS-5 and above have had to serve at least 1 year in grade before being promoted. This restriction originated in statute with the now expired "Whitten Amendment," a series of controls on expansion of the Federal

work force during the Korean conflict. The time-in-grade restriction currently is in 5 CFR part 300, subpart F. Prior to the Whitten Amendment, no such regulatory restriction existed.

The National Performance Review recommended abolishing the time-ingrade restriction because it prevents employees from being considered for jobs for which they qualify. On June 15, 1994, OPM proposed regulations (59 FR 30717) to abolish the time-in-grade restriction. We received 241 written comments; 30 agreed with the proposal (22 individuals and 8 agencies) and 211 disagreed with it (197 individuals, 5 employee unions, 2 agencies, and 7

other organizations).

Comments from individuals include 189 form letters expressing serious concern that the proposal would have an adverse impact on minority and disabled employees. Others also commented that the elimination of time in grade could lead to favoritism and inequity in promotions, and promoted employees would not be qualified. A majority of commenters who opposed the proposal requested an extension of the comment period.

As requested, OPM is extending the comment period to allow additional time to examine the proposal. We are also using this notice to provide additional information on the background of the time-in-grade restriction and the impact of its elimination.

B. History of Restriction

In the early 1950's as the conflict in Korea escalated, Congress determined it should take steps to prevent a permanent buildup of the civil service with expanded grade levels as had happened during World War II and, during 1951-52, it adopted the socalled "Whitten Amendment," a series of personnel controls. These statutory controls included a requirement to make all promotions and appointments on a temporary basis to simplify readjustment downward at the end of the conflict, an annual survey of positions to assure they were properly graded, and time-in-grade restrictions to prevent excessively rapid promotions.

Thus, the basis for the original timein-grade restriction was not to prevent favoritism, but to prevent the permanent upgrading of the work force and avoid the disruption and readjustments required after World War II. The former

Civil Service Commission was responsible for administering the restriction for competitive service positions and agency heads for excepted service positions.

Before allowing the Whitten Amendment to expire, Congress sought a review by the Civil Service Commission to determine whether any of its provisions, including time-ingrade, should be retained. The Commission reported that the time-ingrade restriction on competitive service employees had been placed in regulation and would continue even if the Whitten Amendment expired. Subsequently, Congress permitted the Whitten Amendment to expire effective September 14, 1978. Since then, competitive service employees, but not excepted employees, have continued to be subject to the Governmentwide timein-grade restriction, although individual agencies could at their discretion require it for excepted employees.

Over the 16 years since its expiration, much has happened in Federal personnel administration. The civil service has been subject to numerous reviews, and several reports, most recently from the National Performance Review, have recommended deregulation and simplification of the hiring system. The time-in-grade rule is often seen as a symbol of bureaucratic red tape that binds managers hands and prevents the efficient use of qualified

workers.

C. NPR Proposal

In its September 1993 report From Red Tape to Results: Creating a Government That Works Better & Costs Less, the National Performance Review (NPR) recommended abolishing the time in-grade requirement as an arbitrary limit on competition. The requirement excludes from consideration those candidates who meet OPM qualification standards and have the proven ability to perform the duties of higher grade positions, but who have not served at least one year in lower graded Government positions. See pages 11 and 15 of Reinventing Human Resources Management, Accompanying Report of the National Performance Review.

The National Partnership Council, established by Executive Order 12871 of October 1, 1993, was charged with developing legislative proposals for the President to implement the NPR recommendations. The Council's report